MT LEGISLATIVE HISTORY

Chapter 547 19 75

Bill H 426 S _____ Original bill & hist. ___C

H. Committee on Bus & Ind.			S. Committee on Bus & Ind.		
Hearing Date(s)	1/28	___C	Hearing Date(s)	2/18	___C
	2/19	___C		3/14	___C
	3/24	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C		_____	___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

House BILL NO. 426

INTRODUCED BY Linda Nelsonet
Kemmis Holmes, Lester Stolz

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE CONSUMER REPORTING AGENCIES OPERATING IN MONTANA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. It is the purpose of this act to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this act. The act's further purpose is to guard an individual's right to privacy guaranteed in Article II, section 10, of the Montana constitution.

Section 2. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this act.

(2) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(3) The term "consumer" means an individual.

INTRODUCED BILL

LC 0663

(4) (a) The term "consumer report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes; or

(ii) employment purposes; or

(iii) other purposes authorized under section 4.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the

HB426

disclosures to the consumer required under section 15.

(5) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(6) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(7) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(8) The term "employment purposes" when used in

connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(9) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

Section 3. Credit rating -- property right. A good credit rating is a property right with full constitutional protection.

Section 4. Permissible purposes of reports. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) in response to the order of a court having jurisdiction to issue such an order;

(2) in accordance with the written instructions of the consumer to whom it relates;

(3) to a person which it has reason to believe:

(a) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(b) intends to use the information for employment

purposes; or

(c) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(d) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(e) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

Section 5. Obsolete information. No consumer reporting agency may make any consumer report containing any of the following items of information:

(1) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen (14) years;

(2) suits and judgments which, from date of entry, antedate the report by more than seven (7) years or until the governing statute of limitations has expired, whichever is the longer period;

(3) paid tax liens which, from date of payment, antedate the report by more than seven (7) years;

(4) accounts placed for collection or charged to profit and loss which antedate the report by more than seven

(7) years;

(5) records of arrest, indictment, or conviction of crime which from date of disposition, release, or parole, antedate the report by more than seven (7) years;

(6) any other adverse item of information which antedates the report by more than seven (7) years.

Section 6. Disclosure of investigative consumer reports. (1) A person may not procure or cause to be prepared or distribute a consumer report or an investigative consumer report on any consumer unless:

(a) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure is made in a writing mailed, or otherwise delivered, to the consumer, not later than three (3) days after the date on which the report was first requested, and includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (2) of this section; or

(b) the report is to be used for employment purposes for which the consumer applied.

(2) Any person who procures or causes to be prepared a consumer report or an investigative consumer report on any consumer shall, upon written request made by the consumer

HB426

within a reasonable period of time after the receipt by him of the disclosure required by subsection (1)(a), shall make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five (5) days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(3) No person may be held liable for any violation of subsection (1) or (2) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (1) or (2).

Section 7. Compliance procedures. (1) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of sections [5 and 6] and to limit the furnishing of consumer reports to the purposes listed under section [4]. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective

user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section [4].

(2) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates, and it shall maintain a record of all persons using the information and the source of each piece of information.

(3) When gathering information, a consumer reporting agency shall notify any person who furnishes information that he is liable to suit if the information is false or furnished with malice or willful intent to injure the consumer.

Section 8. Adverse information. Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report.

Section 9. Disclosures to governmental agencies.

Notwithstanding the provisions of section [4], a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

Section 10. Disclosures to consumers. (1) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(a) the nature and substance of all information (except medical information) in its files on the consumer at the time of the request; and

(b) the sources of the information.

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to the effective date of the act except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

Section 11. Conditions of disclosure to consumer. (1) A consumer reporting agency shall make the disclosures required under section [10] during normal business hours and on reasonable notice.

(2) The disclosures required under section [10] shall be made to the consumer:

(a) in person if he appears in person and furnishes proper identification; or

(b) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(3) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section [10].

(4) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

Section 12. Procedure in case of disputed accuracy. (1) If the completeness or accuracy of any item of information contained in this file is disputed by a consumer, and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be

inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete the information and notify all users, of whom the consumer reporting agency has records, of the information's deletion. The users shall also delete the information.

(2) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.

(3) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof. The consumer reporting agency shall notify the consumer of all users, of whom it has records, who have the disputed information.

Section 13. Disclosures free to consumers. A consumer reporting agency shall make all disclosures pursuant to section [10] and section [12] without charge to the consumer.

Section 14. Public record information for employment purposes. A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on

consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

Section 15. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the

consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty (60) days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(3) No person may be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (1) and (2).

Section 16. Actions available to consumer. (1) A

consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this act.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because he judges the dispute to be frivolous or irrelevant, is liable to suit.

(3) A person who furnishes information to a consumer reporting agency which is false, or who furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

Section 17. Civil liability for willful non-compliance. Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this act with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amounts of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by

HB426

the court.

Section 18. Civil liability for negligent non-compliance. Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

Section 19. Jurisdiction -- venue. A consumer may bring suit in any district court in Montana.

Section 20. The department of business regulation shall enforce this act and promulgate rules necessary to carry out the intent of this act.

-End-

BUSINESS AND INDUSTRY COMMITTEE

February 17, 1975

The meeting of the Business and Industry Committee was called to order this date, at 10:30 A.M., with Chairman Shelden presiding. All members were present.

HB 426....This bill had originally been scheduled for hearing on this date,but was postponed to be heard on February 19. However, apparently a number of people did not know of the change and came from various places in Montana to hear the bill, so Chairman Shelden allowed them to testify regarding HB 426 at this hearing.

Robert Jaeb, Credit Bureau of Helena, testified as an opponent to HB 426. Mr. Jaeb said he felt that the bill was repitious since the Fair Credit Reporting Act completely covers the same contents, only on a national scale. He said the bill confuses many of the areas that are covered under the federal law, and that the FTC regulates this act and he could see no reason why the State Dept. of Business Regulation should undertake the expense of regulating the industry also. Mr. Jaeb passed out literature regarding this matter to the members. This literature is attached hereto.

Hugh Spall, Credit Service Company of Great Falls, Montana, also testified as an opponent to HB 426. He said the bill conflicts with the Fair Credit Reporting Act, especially with clauses pertaining to investigative reporting. Mr. Spall, furthur testified that the Federal Trade Commission already supervised credit and the bill was unnecessary.

Other opponents who submitted written testimony, but did not testify are: Gil Koch, Credit Bureau of Missoula; C.B. Schwartz also of the Credit Bureau of Missoula; Vernon D. Sedlacek, Credit Bureau of Havre. Their statements are attached hereto.

SB 150...Senator Towe, sponsor, explained the bill and the need for it. He said Montana was one of the few states that still used this system, and that it was impossible to determine the true rate of return, and the depreciation. Senator Towe said the actual returns of the Montana Power Company, from a study made two years ago showed a twenty-two percent rate of return, but that the Power Company showed a smaller rate on their reports. He said that the Public Service Commission does regulate rates in general practice, and they may ascertain property values, but this bill would allow the PSC to determine rates according to value not exceeding the original cost of the property, and depreciation would not be taken into consideration. He further said that the Company would be allowed to make a guaranteed profit.

Clyde Jarvis, Montana Farmers Union, submitted his written testimony, which is attached hereto. Mr. Jarvis was a proponent to SB 150.

Bryant Hatch, representing F.A.I.R., testifed briefly as a proponent to this bill, expressing his complete agreement with Senator Towe's testimony.

Richard E. Hansen, Salt Creek Freightways, testified as an opponent to HB 537. He said he agreed with the testimony of Mr. Coleman and Mr. Buttars.

In closing, Rep. Quilici said he could see where the freight companies did have problems and thought there should be a subcommittee appointed to further study some amendments to this bill. He said that he feels, from listening to the testimony offered by the freight companies, that they would like to get out of the intra-freight hauling business in the state as Consolidated Freightlines did, because there is no money in hauling intra-freight, yet it is a service to the people of Montana.

Questions were asked by the members; Rep. Fabrega inquired of Mr. Buttars as to the reasons of freight damage, and Mr. Buttars said the problems resulted because of inferior cartons being used by the shipper, and that perhaps a teamster had more allegiance to his teamsters instead of to the person who is employing him. Another reason was that sometimes railroad cars and trucks are packed over capacity.

More discussion followed with regard to insurance for coverage and the methods of settling claims.

Charles Wolfe, spoke briefly as an opponent to the bill, expressing agreement with the other opponents.

Chairman Shelden appointed a subcommittee to HB 537; Rep.'s Quilici, Fabrega and Williams.

HB 426...Rep. Kimble explained the bill, stating that this was a duplication of the federal law. Rep. Kimble was the sponsor of HB 426. He further said, the bill would allow the consumer to come to Helena for a hearing instead of having to go to Seattle, Washington for that purpose, and he felt that this was a service that should be provided to the people in the State of Montana.

Hugh Spall, Credit Service Co., of Montana, testified as an opponent to this bill. He said the federal law is adequate and did not see the need for the duplicity, and the added expense to the people of Montana. Mr. Spall said there were no complaints against the credit bureaus in this state, and he could see no need for this new bureau to be created.

Robert H. Jaeb, Credit Bureau of Helena, testified as an opponent to this bill also. He objected to portions of the bill, on page 2, section 6, lines 9 and 24.

Rep. Kimble, in closing, said that this does give rise to a state agency, but he was told two years ago to let this type of legislation pass because the federal government was going to make some changes and it would be necessary to have such a bill in Montana. He also said that a proposed amendment should be added to the bill, relative to Unfair Trades Act of 1973.

Mr. Spall said the federal government has a bill that will protect the consumer.

There was further discussion regarding the reports given to businesses, and the amendments needed for HB 426, and it was determined that everyone would be satisfied with the removal of "investigative consumer report" from section 6.

HB 590...Rep. Kimble, sponsor for this bill, explained the bill. He said this bill deals with removing the ten percent of security from the responsibility of the contractor. He stated that the main proponent for this bill was not available at this time, as he was on vacation. There were no other proponents, nor any opponents to this bill.

A question and answer period followed regarding parts of the bill, and Rep. Kimble explained that in the past a smaller contractor could not afford to tie up too much money, because if something happened, it would mean that they would forfeit this ten percent. He then went on to explain, that if the job were completed, the bond was no longer carried. This bill would provide a means whereby the small contractor could leave it to the municipality to decide what they wanted to use, be it a bond, certified check or whatever in lieu of a bond.

The following action was taken by the committee:

HB 590...Rep. Fagg moved to DO PASS HB 590. This motion passed unanimously.

SB 150...Rep. Quilici moved that this bill DO PASS. This motion passed, with Rep.'s Fagg, Tropila and Fabrega voting NO.

SB 108...Rep. Fagg made a motion to adopt the proposed amendments to this bill. This motion passed unanaimously.

Rep. Vincent moved the bill DO PASS AS AMENDED. This motion passed, with Rep.'s Quilici, Tropila, Fagg, Aageson, Fabrega and Casey voting NO. The amendments to this bill were as follows: on page 1, section 1, lines 11 and 12, following "purposes,", "except advertising which encourages conservation of energy and FOR product safety, and" was struck; and inserted was "for". Also on page 1, section 1, line 19, following "1947.", "This act shall not apply to advertising which encourages the conservation of energy, product safety, or informs the public of the availability of alternative forms of energy." was inserted.

There being no more time, the members adjourned, to continue the meeting at 7:30 P.M. of this date.

The meeting of the Business and Industry Committee resumed at 7:30 P.M., with Chairman Shelden presiding. All members were present, with the exception of Rep.'s Williams, Wolfe, Fagg and Wood.

The following action was taken by the committee:

HB 557...Rep. Bradley moved the bill DO PASS AS AMENDED. This motion passed unanimously. A copy of the amendments is attached hereto.

HJR 27...A motion was made to DO PASS AS AMENDED. This motion passed unanimously. A copy of the amendments is attached hereto.

HB 537 was discussed, but the subcommittee for that bill needed more time to consider the bill.

Chairman Shelden gave a summary of the bills yet to be heard, which were: HB 623, HB 625, HB 681 and HB 273...on Friday, Feb. 21. Those that were heard, but not acted upon were HB 382, HB 426 and HB 537. And on Monday, February 24, HB 684 and HJR 62 would be heard at the regular meeting time of the Business and Industry Committee.

There being no further business, the meeting was adjourned.

sd

ARTHUR H. SHELDEN, Chairman

Everett Snortland testified regarding HB 625, saying that he did not have any major objections to the bill, but he questioned the proposition of direct governmental intervention. Mr. Snortland's testimony is attached hereto.

Rep. Bradley, in closing,said how important it was to train the people for the jobs needed, and said she hoped they would obtain the best advise possible to administer these programs. She hoped they would possibly obtain an economist, an administrator and a researcher to handle the proposed program.

There was much discussion regarding the economic situation and the need for the bill.

HB 273...Rep. Moore, sponsor, talked briefly about this bill. He said it was a back-up measure for another bill he had, and there was no longer a need for the passage of this bill.

HB 681...Rep. Moore, sponsor, also spoke briefly on this bill, saying there was no longer a need for it, as SB 1 was a bill to recodify the liquor laws and would cover this matter.

HB 537...Rep. Quilici, sponsor, gave a summary of this bill and his proposed amendments to it, which are attached hereto.

There was a recess at this time until 8:30 P.M. of this date, at which time the hearing resumed.

The following action was taken by the committee:

HB 537...Rep. Quilici moved to DO PASS AS AMENDED, and this motion carried unanimously.

HB 623...Rep. Bradley moved to DO PASS AS AMENDED, and this motion carried, with Rep.'s Casey, Fabrega and Aageson voting NO.

HB 625...A motion was made to DO PASS AS AMENDED, and this motion passed unanimously-Rep. Fagg and Rep. Wood were absent, at this time.

HB 382...Rep. Bradley moved this bill pass as amended, and this motion carried, with Rep.'s Quilici, Tropila, Fagg, Aageson, Fabrega, Casey and Wood voting NO.

HB 426...Rep. Harper moved that this bill DO PASS AS AMENDED, and this motion carried, with Rep.'s Aageson and Casey voting NO. Rep. Wood was absent.

There being no further business, the meeting was adjourned.

sd

Arthur H. Shelden, Chairman

PROPOSED AMENDMENTS TO HOUSE BILL NO. 426

1. Amend page 4, section 3, line 9.
Following: "A"
Strike: "good"

2. Amend page 11, section 13, line 18.
Following: "Disclosures"
Strike: "free"

3. Amend page 11, section 13, line 20.
Following: "[12]"
Strike: "without charge"

4. Amend page 11, section 13, line 21.
Following: "consumer"
Insert: ", with appropriate fees to be established by the department of business regulation, in accordance with the administrative procedures act"

5. Amend page 15, following line 18.
Insert: two new sections, 21 and 22, as follows:

"Section 21. VIOLATION For the purposes of this act, a violation of this law would be in violation of chapter 4, title 85, R.C.M. 1947.

"Section 22. Severability Clause. The provisions of this act are severable and if any part or provision thereof shall be held void, the decisions of the court so holding shall not affect or impair any of the remaining part of provisions of this act."

Rep. Paul Richards

Rep. Robert Harper

Rep. David Aa[illegible]eson

44th LEGISLATIVE SESSION

COMMITTEE ON Business and Industry

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 424	3/7/75	3/12/75	3/14/75					3/14/75	
HB 426	2/28/75	2/28/75	3/14/75					3/14/75	
HB 469	2/24/75	2/28/75	3/10/75					3/10/75	
HB 518	2/21/75	3/5/75	3/14/75					3/14/75	
HB 623	2/28/75	3/14/75	3/14/75				3/14/75		
HB 625	2/28/75	3/14/75	3/17/75				3/17/75		
HB 684	3/7/75	3/14/75	3/17/75					3/17/75	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

March 12, 1975

MINUTES OF THE MEETING

BUSINESS AND INDUSTRY COMMITTEE

MONTANA STATE SENATE

Chairman Regan called the meeting of the Business and Industry Committee to order on the above date in room 404 of the State Capitol Building. The meeting was called to discuss House Bills 400, 416, 424, and 426.

ROLL CALL: All members of the Committee were present with the exception of Senator Devine who was excused.

House Bill 400: Representative Harper presented the bill to the Committee. This bill would provide for licensing of businesses which manufacture, sell, service, and install fire extinguishers, fire alarms. and fire extinguishing systems, and provide an effective date. This bill was amended in the house to include funding. Ben Larango, Missoula Fire Equipment, felt this law is needed to protect people and control the people who sell fire extinguisher systems. Neil Flaherty, Fire Protection Consultants, felt this regulation is necessary. Dan Meizner, Montana League of Cities and Towns, stated that many fire systems are installed wrong. There shoud be some way of protecting the people. Bob Kelly, Montana Fire Chief, stated that many people have fire systems installed and when they are inspected they find they have been installed wrong. A brief discussion period followed with questions from the Committee.

House Bill 416: Representative Lien presented the bill to the Committee. He stated that this bill will correct the present statute. Ed Carney, Department of Professional and Occupational Licensing, has a prepared statement attached. A brief discussion period followed with questions from the Committee.

House Bill 426: Representative Kimble presented the bill to the Committee. This bill would regulate consumer reporting agencies operating in Montana. He futher stated that this bill is a duplication of the federal law. Gil Kock, Credit Bureau of Missoula, opposed the bill because of its cost to the state. He felt that if the Committee were to pass this bill there should be some changes. Page 2, line 2, definition of consumer report. Page 6, section 6, line 8 and line 24. He also requested that section 3 be deleted in its entirety. Doug Klien, Credit Bureau, Hamilton, stated that legislation should benefit the people. A brief discussion period followed with questions from the Committee.

House Bill 424: Representative Moore presented the bill to the Committee. This bill would authorize subsidiary trust companies to have one or more trust offices; to authorize certain banks to maintain

March 14, 1975

Executive Session
6:00 p.m.

MINUTES OF THE MEETING

BUSINESS AND INDUSTRY COMMITTEE

MONTANA STATE SENATE

The meeting of the Business and Industry Committee was called to order by Chairman Regan on the above date in room 404 of the State Capitol Building. The meeting was called to take executive session on House Bills 424, 280, 518, 416, 400, 426, and 623.

ROLL CALL: All members of the Committee were present with the exception of Senator Devine who was excused.

House Bill 424: Senator Towe moved the amendments. Prepared amendments attached. All were in favor with Senators Devine and Kolstad absent and Senator Foster voting no. Senator Greely moved the bill be concurred in as amended. All were in favor.

House Bill 280: Senator Towe moved the amendments. Prepared amendments attached. All were in favor with Senators Rosell, Kolstad, and Hazelbaker voting no. Senator Towe moved the bill be concurred in as amended. Motion failed with Senators Rosell, Kolstad Hazelbaker, and Foster opposed.

House Bill 518: Senator Greely moved the amendments. Prepared amendments attached. All were in favor. Senator Greely moved the bill be concurred in as amended. All were in favor.

House Bill 416: Senator Towe moved the attached amendments. All were in favor. Senator Foster moved the bill be concurred in as amended. All were in favor with Senator Greely abstaining.

House Bill 400: Senator Regan moved the attached amendments. All were in favor. Senator Regan moved the bill be concurred in as amended. All were in favor.

House Bill 426: Senator Rosell moved the amendments. Prepared amendments attached. All were in favor with Senators Foster and Kolstad absent for the vote. Senator Greely moved the bill be concurred in as amended. All were in favor with Senators Foster and Kolstad absent for the vote.

House Bill 623: Senator Greely moved the bill be concurred in. All were in favor with Senators Foster and Kolstad absent for the vote and Senators Rosell and Towe opposed.

ADJOURN: There being no further business Chairman Regan adjourned the meeting at 7:15 p.m.

Pat Regan, Chairman

STANDING COMMITTEE REPORT

March 14 19 75

MR. PRESIDENT

We, your committee on Business and Industry

having had under consideration House Bill No. 426

Respectfully report as follows: That House Bill No. 426

third reading bill, be amended as follows:

1. Amend page 6, section 6, line 10.
Following: "distribute"
Strike: "a consumer report or "

2// Amend page 6, section 6, line 24.
Following: "prepared"
Strike: "a"

3. Amend page 6, section 6, line 25.
Following: line 24.
Strike: "consumer report or"

~~BE NOT~~
DO PASS

AND AS SO AMENDED, BE CONCURRED IN

~~PAT REDEKER~~, Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 426

INTRODUCED BY KIMBLE, DUSSAULT, KEMMIS,

HOLMES, LESTER, STOLTZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE CONSUMER REPORTING AGENCIES OPERATING IN MONTANA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. It is the purpose of this act to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this act. The act's further purpose is to guard an individual's right to privacy guaranteed in Article II, section 10, of the Montana constitution.

Section 2. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this act.

(2) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

REFERENCE BILL

(3) The term "consumer" means an individual.

(4) (a) The term "consumer report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes; or

(ii) employment purposes; or

(iii) other purposes authorized under section 4.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person

to whom the request was made and such person makes the disclosures to the consumer required under section 15.

(5) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(6) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(7) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(8) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(9) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

Section 3. Credit rating -- property right. A good credit rating is a property right with full constitutional protection.

Section 4. Permissible purposes of reports. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) in response to the order of a court having jurisdiction to issue such an order;

(2) in accordance with the written instructions of the consumer to whom it relates;

(3) to a person which it has reason to believe:

(a) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(b) intends to use the information for employment purposes; or

(c) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(d) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(e) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

Section 5. Obsolete information. No consumer reporting agency may make any consumer report containing any of the following items of information:

(1) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen (14) years;

(2) suits and judgments which, from date of entry, antedate the report by more than seven (7) years or until the governing statute of limitations has expired, whichever is the longer period;

(3) paid tax liens which, from date of payment, antedate the report by more than seven (7) years;

(4) accounts placed for collection or charged to

profit and loss which antedate the report by more than seven (7) years;

(5) records of arrest, indictment, or conviction of crime which from date of disposition, release, or parole, antedate the report by more than seven (7) years;

(6) any other adverse item of information which antedates the report by more than seven (7) years.

Section 6. Disclosure of investigative consumer reports. (1) A person may not procure or cause to be prepared or distribute ~~a consumer report or~~ an investigative consumer report on any consumer unless:

(a) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure is made in a writing mailed, or otherwise delivered, to the consumer, not later than three (3) days after the date on which the report was first requested, and includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (2) of this section; or

(b) the report is to be used for employment purposes for which the consumer applied.

(2) Any person who procures or causes to be prepared ~~a consumer report or~~ an investigative consumer report on any

consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (1)(a), shall make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five (5) days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(3) No person may be held liable for any violation of subsection (1) or (2) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (1) or (2).

Section 7. Compliance procedures. (1) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of sections [5 and 6] and to limit the furnishing of consumer reports to the purposes listed under section [4]. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new

prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section [4].

(2) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates, and it shall maintain a record of all persons using the information and the source of each piece of information.

(3) When gathering information, a consumer reporting agency shall notify any person who furnishes information that he is liable to suit if the information is false or furnished with malice or willful intent to injure the consumer.

Section 8. Adverse information. Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report.

Section 9. Disclosures to governmental agencies.

Notwithstanding the provisions of section [4], a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

Section 10. Disclosures to consumers. (1) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(a) the nature and substance of all information (except medical information) in its files on the consumer at the time of the request; and

(b) the sources of the information.

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to the effective date of the act except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

Section 11. Conditions of disclosure to consumer. (1) A consumer reporting agency shall make the disclosures required under section [10] during normal business hours and on reasonable notice.

(2) The disclosures required under section [10] shall be made to the consumer:

(a) in person if he appears in person and furnishes proper identification; or

(b) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(3) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section [10].

(4) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

Section 12. Procedure in case of disputed accuracy. (1) If the completeness or accuracy of any item of information contained in this file is disputed by a consumer, and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be

inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete the information and notify all users, of whom the consumer reporting agency has records, of the information's deletion. The users shall also delete the information.

(2) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.

(3) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof. The consumer reporting agency shall notify the consumer of all users, of whom it has records, who have the disputed information.

Section 13. Disclosures ~~free~~ to consumers. A consumer reporting agency shall make all disclosures pursuant to section [10] and section [12] ~~without--charge~~ to the consumer, WITH APPROPRIATE FEES TO BE ESTABLISHED BY THE DEPARTMENT OF BUSINESS REGULATION, IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

Section 14. Public record information for employment purposes. A consumer reporting agency which furnishes a

consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

Section 15. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information

contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty (60) days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(3) No person may be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the

provisions of subsections (1) and (2).

Section 16. Actions available to consumer. (1) A consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this act.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because he judges the dispute to be frivolous or irrelevant, is liable to suit.

(3) A person who furnishes information to a consumer reporting agency which is false, or who furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

Section 17. Civil liability for willful non-compliance. Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this act with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amounts of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce

any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

Section 18. Civil liability for negligent non-compliance. Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

Section 19. Jurisdiction -- venue. A consumer may bring suit in any district court in Montana.

Section 20. The department of business regulation shall enforce this act and promulgate rules necessary to carry out the intent of this act.

SECTION 21. VIOLATION. FOR THE PURPOSES OF THIS ACT, A VIOLATION OF THIS LAW WOULD BE IN VIOLATION OF CHAPTER 4, TITLE 85, R.C.M. 1947.

SECTION 22. SEVERABILITY CLAUSE. THE PROVISIONS OF THIS ACT ARE SEVERABLE AND IF ANY PART OR PROVISION THEREOF

SHALL BE HELD VOID, THE DECISIONS OF THE COURT SO HOLDING SHALL NOT AFFECT OR IMPAIR ANY OF THE REMAINING PART OF PROVISIONS OF THIS ACT.

-End-